

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission On Its Own Motion)	
)	
Investigation Concerning Illinois Bell Telephone)	Docket No. 01-0662
Company's compliance with Section 271 of the)	
Telecommunications Act of 1996)	

**RESPONSE OF SBC ILLINOIS TO EMERGENCY PETITION
FOR INTERLOCUTORY REVIEW**

Illinois Bell Telephone Company (“SBC Illinois” or the “Company”), by its attorneys, hereby submits its Response to the Emergency Petition for Interlocutory Review of Administrative Law Judge’s Ruling on Remedy Plan filed by AT&T Communications of Illinois, McLeodUSA Telecommunications Services, Inc. and WorldCom, Inc. (the “CLECs”).

1. The CLECs’ Emergency Petition requests that the Commission overrule a ruling by the Administrative Law Judge that the parties can and should address what remedy plan this Commission should approve in connection with its review of SBC Illinois’ compliance with the checklist and the section 271 approval policies of the Federal Communications Commission (“FCC”). The Administrative Law Judge concluded, based on this Commission’s recent December 30, 2002, Order in the Alternative Regulation Plan Review proceeding (Docket Nos. 98-0252/98-0335/00-0764) that the Commission would entertain alternative remedy plan proposals in this proceeding. (ALJ Ruling at 4). The CLECs contend that the Commission’s prior orders in Docket No. 01-0120 preclude consideration of any remedy plan other than the plan approved in that proceeding.

2. SBC Illinois agrees with the Administrative Law Judge’s interpretation of the relevant orders discussed in her ruling. Like the Administrative Law Judge, SBC Illinois

understood the Alternative Regulation Plan Order to adopt the Docket No. 01-0120 order on an interim basis only and to permit consideration of alternatives in this proceeding. If the Commission had intended to mandate the Docket No. 01-0120 plan for all eternity in the Alternative Regulation Plan Order, it would have said so. The Administrative Law Judge's ruling simply follows this recent directive from the Commission.

3. The CLECs contend that “[a]bsolutely no reason has been given to justify tossing all this [01-0120] effort aside.” (CLEC Motion at 7). This is patently incorrect. First, the CLECs are ignoring the enormous controversy which has surrounded the Commission's Orders in Docket No. 01-0120 and its attempt to extend a plan adopted under Condition 30 of the Merger Order beyond its expiration date. Given the uncertainties associated with that Order, it is more than reasonable to at least consider alternatives. Second, even if the Docket No. 01-0120 orders had not been controversial, the remedy plan approved in that proceeding was based on a record developed during a period when SBC Illinois' wholesale service quality was below the levels of today. Much has changed since then, including the implementation of new systems and processes pursuant to other provisions of the Merger Order. At a minimum, the extreme penalty structure adopted in that proceeding to incent corrective action should be revisited based on current circumstances. Third, since this is a Section 271 checklist proceeding, not a merger condition proceeding, the remedy plan should be evaluated in light of the FCC's standards and policies. The Docket No. 01-0120 remedy plan is punitive and exceeds several times over what the FCC has found to be sufficient in section 271 applications. In other words, the mere fact that the Commission found the Docket No. 01-0120 remedy plan appropriate for one purpose, at one point in time, does not mean that it will remain appropriate for all purposes and for all time.

4. The CLECs suggest that remedy plan issues cannot possibly be addressed in the time frames which have been adopted for the remainder of the Phase 2 issues.¹ (CLEC Motion at 2, fn. 1; CLEC Motion at 8-9). The CLECs are greatly exaggerating the magnitude of the work effort here. SBC Illinois circulated prefiled testimony describing the plan which it will present in Docket No. 01-0662 (the “Compromise Plan”) in June of 2002. This plan had been the subject of negotiations with CLECs prior to June. Although the June testimony was subsequently severed from the Phase 1 proceedings and although minor alterations have been made since then, the CLECs have been fully apprised of – and have had ample opportunity to evaluate – this plan. They are not starting from “scratch” by any stretch of the imagination.

5. Furthermore, much of the work effort involved in Docket No. 01-0120 is reflected in the Compromise Plan. Several of the more complex issues (e.g., the K table and issues associated with statistical tests) need not be addressed again – the Compromise Plan is consistent with the mandates of the Docket No. 01-0120 order in these regards. Furthermore, having litigated remedy plans once in Docket No. 01-0120, it will require far less time to address just the components of the Compromise Plan which are different from the Docket No. 01-0120 plan. SBC Illinois believes that the remedy plan review process can readily be completed within the roughly 90-day period contemplated for the other Phase 2 issues. The Administrative Law Judge should be authorized to establish an appropriate schedule for the treatment of the remedy plan issues within this time frame.²

¹ The CLECs complain that the Phase 2 process is already highly expedited on an approximately 90-day calendar. (CLEC Motion at 2, fn. 1). The CLECs complain too much. The same Phase 2 process was completed in Michigan in a similar 90-day period, when both the BearingPoint and the E&Y Reports were new to the parties. The BearingPoint and E&Y Reports in Illinois are methodically identical to the Michigan Reports and require even less review, because many of the problems identified early on in Michigan have now been corrected or corrective procedures are in place. The principal reason why the schedule appears compressed is that the Commission Staff and other parties have insisted on inserting excessive procedural steps into the 90-day period.

² The CLECs have no one to blame but themselves for the fact that the remedy plan review process is just beginning now. SBC Illinois was prepared to initiate Phase 1B last June. However, in the face of unrelenting Staff

6. Accordingly, the CLECs' Emergency Petition for Interlocutory Review should be denied.

Respectfully submitted,

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and CLEC opposition to any consideration of remedy plan alternatives, SBC Illinois ultimately concluded that continued debate over the issue was unproductive. (Response of Ameritech Illinois to Staff's Motion to Dismiss, filed October 11, 2002). Staff and the CLECs have been on notice since November 8, 2002, when SBC Illinois filed its required 120-day notice, that the end date for this proceeding was in sight. (Ameritech Illinois' Notice of Intent to File Application Under Section 271 of the Telecommunications Act of 1996).

CERTIFICATE OF SERVICE

I, Louise A. Sunderland, an attorney, certify that a copy of the foregoing **RESPONSE OF SBC ILLINOIS TO EMERGENCY PETITION FOR INTERLOCUTORY REVIEW** was served on the following parties by regular U.S. Mail and electronic transmission on January 21, 2003.

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